

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Streamlining the Commission's Antenna)
Structure Clearance Procedure)
and)
Revision of Part 17 of the Commission's)
Rules Concerning Construction, Marking,)
and Lighting of Antenna Structures)

WT Docket No. 95-5

To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**COMMENTS OF DEAN BROTHERS PUBLISHING
D/B/A FRYER'S SITE GUIDE
TO NOTICE OF PROPOSED RULE MAKING**

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SUMMARY

Dean Brothers Publishing, the publisher of Fryer's Site Guide, hereby supports the Commission's efforts to better record the construction and modification of antenna supporting structures. Fryer urges the Commission to initiate a program whereby all structures requiring FAA clearance for construction and operation be registered with the Commission.

Fryer respectfully opposes any proposal to register all antenna supporting structures, including those which do not require FAA notification, as impractical and of little benefit to the stated goals contained within the Notice of Proposed Rule Making.

Fryer has also responded to the Commission's request for comments on the many issues surrounding the registration of antenna supporting structures to assist the Commission in reaching its objectives without resultant harm to radio system operators or harm to the marketplace created via burdensome regulation.

It is apparent that with a judicious application of regulation and a patient approach to the industry, the Commission can reap many rewards from adoption of this proposed program.

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Dean Brothers Publishing, the publishers of *Fryer's Site Guide* (Fryer), by and through counsel, in an effort to assist the Commission in its stated desire to better regulate the construction and operation of antenna supporting structures, hereby submits comments to the above captioned Notice of Proposed Rule Making (NPRM).

Fryer Is Uniquely Qualified To Make Comment

Fryer publishes the only comprehensive directory of antenna supporting structures which is employed by telecommunications companies, engineering firms, law firms, site acquisition firms, federal agencies, state agencies, local governments, and numerous carriers throughout the United States. As part of its mission to provide to subscribers the best possible data regarding the existence of antenna supporting structures ("sites"), Fryer has employed numerous unique and diligent methods of obtaining reliable data, identifying not only the technical parameters of

the sites but the owner/manager as well. By and through the data collected and published in Fryer's regional volumes and its associated On-Line data service, subscribers have been able to quickly identify the universe of available sites in any given region of the United States and to contact the owner or operator of the site to determine the availability of space, the performance characteristics of the given site, and other related information necessary for the preparation of an application to the Commission.

Prior to Fryer's entrance into the market, there existed no vehicle for the dissemination of such information. Instead, companies searching for sites either drove around regions, attempting to spot an available site location, employed the yellow pages, or simply perused the Commission's files trying to find an application that indicated that a desirable site might be available. In the years following Fryer's entrance into the market, the Company's identification of sites and their availability for commercial use has helped speed the delivery of telecommunications services to the market and has assisted in making more rational the entire site industry.

The experiences and knowledge obtained by Fryer's make it uniquely qualified to make comment to this rule making. There exists no other source which has obtained a greater wealth of knowledge regarding the existence of sites and the persons who operate those sites. There also is no other entity which is so well positioned to comment on the obstacles and problems that the Commission will experience in its efforts. Fryer hereby hopes to assist the Commission in

its laudable efforts and provide a little first-hand knowledge in what the Commission might expect in the future.

The Commission's Existing Resources

Fryer is intimately aware of the data bases available to the Commission in commencing its efforts. Fryer routinely reviews the data bases created by the Federal Aviation Administration and the Commission. Despite the fact that these sources of data were helpful in beginning the creation of a comprehensive system of reporting, it must be admitted that these data sources are lacking in consistency, accuracy and completeness.¹ In fact, over one-third of the sites included in *Fryer's Site Guide* are fully composed of data obtained from sources outside of these data bases. Although such information often relates to rooftops and other structures which do not require approval from the FAA, many others are towers which were constructed and which simply did not appear in either the FAA or the FCC tower data bases.

In addition, there are many inclusions within the federal government's data bases of towers which were either never constructed or which were torn down subsequent to their inclusion in one of the data bases.² Although Fryer has continuously sought to improve, update

¹ Fryer's initial efforts included culling through the FAA and FCC data bases and rejecting outright more than twenty percent of the data included as incomplete, redundant or simply unusable.

² Fryer notes the Commission's proposal to require notification of deconstruction of an antenna supporting structure. Although Fryer understands the need for such information gathering by the Commission, Fryer suggests that this information will be difficult to obtain since persons deconstructing sites possess little incentive to inform the Commission of this activity.

and identify these kinds of problems for correction within its publication, it can be honestly stated that such efforts must be ongoing and constant. The dynamics of the industry have required a high level of vigilance to obtain credible data for site after site, then require additional resources to assure that modifications, additions and deletions are faithfully recorded. Since Fryer's has created a system for performing these surveys for its own use, Fryer recognizes that the Commission's efforts will be extensive, ongoing and difficult.

Insofar as the Commission's efforts are directed at improving this information, Fryer fully supports the Commission's efforts. Having spent nearly four years at this task, Fryer recognizes the monumental effort proposed by the Commission and salutes its commitment to this effort. The rationalization of this information will be difficult and often the sources of the information are contradicting. Seeking and obtaining cooperation from the site owners will be quite difficult under any circumstances, particularly in those instances where the identity of the structure owner is unknown to the Commission. This is not because the site owners might eschew the Commission's efforts, although one must expect a period of adjustment to new regulation. Moreover, it will be difficult to assure that each site owner is fully informed about the Commission's efforts and the site owner's duty to cooperate with that effort.

Whereas, in the past, the Commission's Rules appeared to presume that the owner of a site was also an operator upon that site, the proposals herein recognize that such a presumption is often flawed. It is increasingly common, especially for the operation of regional or national systems, that the owner of a tower is not licensed for operation of a radio facility at that

location. Accordingly, the Commission's proposals rightfully direct its attention for enforcement of its rules and in accord with the recently amended Communications Act toward the site owner/operator and away from the tenant licensee.

However, this approach has its problems, as well. First, the site owner may not be involved in any other telecommunications activity. Accordingly, it may be difficult for the operator to become informed about any initiative begun by this proceeding. Second, the site owner may have turned over all management duties to a third party and, thus, be an additional informational step removed from this effort. Finally, the site owner might not be aware of violations created by lessees upon the site. The first such example which springs to mind is the mounting of an antenna at a height which causes an unauthorized increase in the overall height of the structure.³ Due to these problems, the Commission should move ahead with some degree of understanding and caution, to assure that its efforts net the desired result following a realistic appreciation of the changes which, once adopted, its proposals might have on the marketplace.

For these reasons, Fryer respectfully suggests that the Commission's requirements be phased in over an extended period to allow for the dissemination of information and the change in operations which will be required to effect the Commission's goals. Fryer suggests that a minimum of five years be provided for all operators to move into compliance with the Commission's new requirements. This suggested time period takes into consideration (a) the

³ Since site leases commonly provide for unsupervised ingress and egress to a tower for lessees, it is not uncommon for a lessee's workmen to mount antennas at a position which does not reflect the clear terms of the lease.

rewriting of site leases between owners and lessees, to reflect changes in duties between the parties; (b) the enormous number of sites spread throughout the United States; and (3) the Commission's tremendous task to record the information to be received via its efforts.

Registration Recommendations

At footnote 19 of its Notice, the Commission proposes to require registration of all antennas structures which require FAA clearance and, perhaps, the remainder of the antenna structures equalling up to 500,000 affected structures across the United States. Although the Commission's initiative demonstrated by its proposal might be quite laudable, it is also somewhat impractical, if the Commission attempts to register every antenna structure. What the Commission refers to is an enormous undertaking with constantly changing and shifting data, much of which would be not of any great use to the Commission or anyone else. Therefore, to insure a more practical and useful goal, Fryer suggests that the Commission limit its registration requirement to include only those structures which require FAA clearance and those which height exceeds 60.96 meters (200 feet). Specifically excluded would be those manmade structures, such as buildings, where the mounted antennas do not increase the overall height of the structure by greater than twenty feet.

As stated above, the Commission's efforts are ambitious but difficult to attain. Many structure owners and operators will have difficulty being informed about the new requirements. However, in the case of those which require FAA clearance, the Commission has a semblance of an opportunity to contact each affected tower owner. Even this task will be difficult since

many FAA studies are in the name of a previous "tenant licensee" which increased the overall height of the tower, but never owned or managed the property. Accordingly, piercing this veil of disinformation will be substantially difficult, even for towers which require FAA clearance. But attempting to reach each and every owner of a pole, building, mast, water tower, and the like, then requiring each to register the site and mark the site with a registration number simply because it is used for operation of a radio facility, any radio facility, is unrealistically optimistic and probably overreaching.

Nor would such a program be of great use to the Commission or the FAA. What purpose would be served by requiring that the real property owner of a two-story building, upon which is placed a single VHF antenna, register that location? The FAA's interests are not served. The licensee of the radio facility will glean no benefit. And the Commission's mandate to regulate antenna supporting structures would be burdened with millions of records that are of questionable accuracy and/or use. Meanwhile, tens of thousands of persons with little or no connection to the telecommunications industry, save granting permission to a tenant licensee to construct an antenna upon their building, will suddenly come under this new requirement and the burden associated with it.⁴

Perhaps the most disturbing element of this broad proposal is the possible chilling effect it will have on the industry. Today, an innovative operator can perform system design which

⁴ The proposal to register every antenna structure appears to be contrary to the recent statements made by the U.S. Congress and the office of President, which suggest that burdensome regulation should be abolished.

includes the use of many structures for mounting antennas. Billboards, water towers, telephone poles, and many other structures have been employed to fill in shadow areas and blocked areas of coverage.⁵ The public has benefitted by the creative uses of manmade structures by the industry's radio operators. And cooperative property owners have picked up a few dollars in rent for their contribution to the delivery of telecommunications services. But, if those same operators were required to register their property with the Commission and, thus, expose themselves to real or perceived scrutiny, their willingness to cooperate with operators would be greatly reduced.

Radio system operators are increasingly relying on the cooperation of property owners for construction of low-level sites and this trend is increasing rapidly with the advent of PCS. Personal Communications Services will require multiple sites at low locations to serve each market. PCS operators will rely on their ability to find cooperative property owners for construction of radio facilities which include relatively small transceiver locations and associated hardware. The Commission's proposal to require registration of each such structure will likely chill those operators' ability to find cooperative property owners and enter into an agreement for the property's use.⁶

⁵ Fryer is aware of one operator of a radio facility which has mounted its antenna in a tree on U.S. Forest Land, with the appropriate land use permits. It would be difficult to image the benefit to be gained by the operator, the FAA or the Commission in requiring the registration of this structure.

⁶ Fryer notes that a property owner would be required to inform the Commission of changes in ownership or renovations which would include a change in height. Consider the reaction from a property owner who has no interest in telecommunications, but who might otherwise be willing to cooperate with a prospective operator to place on a low building an antenna. If

The Commission has stated its intention in creating the registration system as an attempt to ease the burdens on the industry. In reaching its goal, the Commission should not accidentally create an even greater burden by reducing the availability of sites for construction.⁷ Nor should the Commission lose sight of the fact that as it draws within its jurisdiction owners and operators of structures, these persons are also entitled to have unnecessary regulatory burdens lifted. Or, in this case, not imposed.

Fryer emphasizes that its suggestions regarding forbearance only include those structures for which FAA clearance is not and would not be required. For those structures where FAA clearance is required, the public interest demands that better and more accurate information be made available to assure safety in air transportation. It is also a beneficial byproduct if the registration of those structures would ease application preparation and processing burdens for

subject the proposed regulation requiring registration, that same property owner would likely consider the increased obligations on his business and reject the radio operator's offer. In the alternative, the likelihood that the property owner would update the Commission's records is slim. And, the likelihood that the property owner would prepare the registration form and submit it to the Commission is also slight. Accordingly, much of the registration burden would fall on the radio operator, the very entity which the Commission is attempting to spare.

⁷ Fryer cannot determine the reason the Commission has proposed at footnote 22 of its NPRM, whereby the Commission would not require cellular or PCS operators to provide registration numbers. Since the focus of the Commission's proposals is to provide accurate information regarding the location and existence of radio facilities and the associated structures, there appears to be no reason to exclude PCS and cellular licensees, simply because of system licensing. An internal cell of these systems might be placed on a hazardous structure or a structure which has not received FAA clearance. Accordingly, use of registration in cellular and PCS applications is, in fact, no different than any other use, despite the system licensing procedures employed. To the contrary, often cell sites are alone upon a given structure and, therefore, registration numbers provided by the cellular operator will be the only method the Commission has to identify such structures.

licensees and the Commission. Accordingly, Fryer supports fully the Commission's registration of those structures. Fryer simply believes that further registration and marking of other structures is not practical, beneficial, and would create a chill on the use of such structures by operators in the future.

Fryer respectfully suggests that any program initiated by this rule making include only those structures requiring FAA approval. Following the Commission's experience with those 70,000 or more structures, the Commission would be better positioned to reexamine the benefits and practicality of a broader registration program that might include every fixed mounted antenna in America.

Timing of Registration

Fryer hereby supports the Commission's proposal offered at paragraph 11(c) of the NPRM which would phase in registration during the renewal process of existing licenses. Structure owners will require some impetus to register which would be provided by the need of telecommunications operators to obtain proper registration during the time of license renewal. Accordingly, this proposal appears best designed to create some assurance of success.

The Commission's other proposals lack the same level of practicality as the ten-year, renewal phase in proposed at paragraph 11(c). First, there is bound to be some level of confusion as to when or if a particular structure owner might or must register a given site. Second, the prosecution of applications for modification or renewal might be adversely affected

as applicants argue that the subject structure is not then within the region or at a given height whereby registration is mandatory. Third, it will be difficult for the Commission to track and record registrations under the best of circumstances, therefore, scrutiny at the time of application for renewal appears best situated for this task.

There does appear to be an open question as to when the Commission will confirm the data received by applicants. It is not clear whether the Commission will check each and every application in the future to determine whether antenna structure data is current and accurate as compared to the latest registration on file with the Commission. For example, if an applicant files a registration copy with the Commission in association with an application, it is unclear whether the Commission will then check each such registration to determine whether the registration number is current and whether the data included on the application is then presently accurate.

Fryer respectfully requests that the Commission clarify its reviewal process of antenna structures. By its proposals it appears that each and every application will be subject to a dual reviewing process. First, to determine whether the remainder of the application is completed in accord with the remainder of the Commission's Rules and then second, to determine whether the information provided by registration numbers is current and accurate.

This requested additional information or clarification is of great importance in determining the results of the Commission's proposed program. It is obvious that a dual

processing method will increase the speed of service in the prosecution of applications. There is also the greater chance that an application will be denied due to inconsistent information between the Commission's present tower registration data base and the information contained within an application. Although such problems and associated delays are fully justifiable to assure that air traffic remains safe, there are grave doubts whether the same delays can be justified to conform the data for a ten-foot high control station.⁸

Once again, Fryer respectfully suggests that only those structures which would require FAA clearance be included in the Commission's registration program. Extending the program beyond these limits will cause many foreseeable problems for applicants, licensees, owners of structures which were heretofore not subject to federal scrutiny and jurisdiction, and for the Commission itself, in initiating and managing the program.

Cost To The Commission

At paragraph 15, the Commission estimates that its cost in identifying and locating and processing applications with inconsistent or modified data was approximately \$500,000. That portion of this expenditure arising out of problems which exist due to incorrect structure data appearing on licenses and applications is unfortunate. Further, adoption of a program to simplify recording changes in mandated FAA painting and lighting requirements is wholly

⁸ At paragraph 16 the Commission notes that "[t]he proposed system should also hasten processing of applications which require FAA notification." Fryer agrees, but further states that the process will increase the amount of time required to process applications, if the Commission is prepared to confirm data for each and every antenna structure prior to grant, including those which do not require FAA notification.

desirable. However, by its proposals the Commission appears prepared to require the same level of oversight for a ten-foot pole mounted on the ground or a three-foot antenna mounted atop a one-story building as it does an increase in height from 500 feet to 600 feet for a tower. The proposals also appear to accept the cost of maintaining such a massive program and the proposals do not contain a cost estimate for this endeavor. Fryer respectfully suggests that the cost of maintaining this data base will equal or exceed the cost presently suffered by the Commission.

That the Commission may have overestimated the savings which its proposed program might create is shown at footnote 24 where the Commission states, "On average, there are 12 separate stations authorized on each antenna structure." *Id.* This statement might be accurate for facilities employing antenna structures requiring FAA clearance, but it is quite doubtful that this average includes all of the control stations, low-level sites, poles, rooftops, etc. that make up the whole of the 500,000 separate sets of geographic coordinates included in the Commission's licensing data base. Accordingly, if the Commission desires to reduce its costs of administering antenna structures in a manner which might produce the 12 to 1 ratio reduction in filing, the Commission's efforts must be restricted to only those sites requiring FAA clearance.

If, on the other hand, the Commission adopts its proposals to include all antenna structures, regardless of height or FAA status, it will accept registration information for an additional 430,000 locations, each requiring processing and registration and conformance with

licensing and application data. The savings, if any, would be minimal and, in fact, the cost could be much greater than the amount presently suffered by the Commission.

Requested Comments

At pages 10 and 11 of the Commission NPRM, the Commission has requested specific comments on a number of issues. Fryer respectfully offers the following:

Voluntary Painting and Lighting:

Although the Commission should not discourage this activity and such tower owners should be praised for assuring that their structure is fully visible to air traffic, Fryer cannot discern any legally supportable method of providing any reward for such action. If these structures would not be subject to registration under other circumstances, proper or diligent operation of such structures should not carry with it a burden of registration. To do so would be to subject the owner to an additional regulatory burden and act as a disincentive to voluntary action.

Access To Data Base:

Obviously Fryer will require access to the data base and would prefer that such information be made available via the Internet for on-line access. In this manner, the information will be readily available to everyone seeking access and such access will be the most generally accessible method for present and future use.

Electronic Filing:

Although there are advantages in acceptance of electronic filing, *i.e.*, ease of processing, there are also problems with the control of information submitted to the Commission. The Commission's proposals suggest that the structure owner is singularly responsible for making and updating registration. Assuring that the information received by the Commission is, in fact, the product of the structure owner might be quite difficult if the structure owner was also required to assure an accurate method of sending an electronic signature. Given the simplified method of registering an antenna structure proposed by the Commission, the Commission might determine that paper filing is sufficient for this program. Such a method of filing is also consistent with the Commission's proposal that a paper copy of the registration be presented to each tenant licensee.

Renewal:

Beyond the Commission's proposals for making modifications to existing registrations to reflect changed circumstances, the Commission is correct that some level of renewal activity might be required to assure greater owner review and compliance. Accordingly, Fryer supports a renewal program which would have each registration expire at the end of a ten-year term. This term appears proper when balancing the burden of registration as against the Commission's need for accurate data. This period would coincide with the Commission's proposal regarding the phasing in of registration in accord with its proposals at paragraph 11(c) and would parallel licensing of stations. Accordingly, the

Commission would not accept in support of an application for renewal of a license any registration number for which ten years have passed since the issuance of such number.

Fees:

Although the Commission is correct that the prosecution of registration forms and maintenance of a data base will create cost for the Commission, the Commission should also take into effect the chilling effect that the imposition of fees might have on structure owners who are performing a cooperative service, rather than an actual business for profit. If, as suggested herein, the Commission were to limit its registration program to only antenna structures requiring FAA clearance, an imposition of fees might be justifiable. However, if the Commission were to extend the program to reach all antenna structures, such fees would be onerous for persons whose only true participation in telecommunications industry is the operation of a conveniently located building. In any event, the fees should be minimal, since the actual prosecution of registration forms is not a time consuming effort for the Commission.

Registration of All Structures:

As stated *infra.*, Fryer is opposed to the registration of all antenna structures and has respectfully suggested many reasons why such a program would be burdensome and not beneficial in forwarding the interests expressed by the Commission within its NPRM. Fryer does, however, appreciate the Commission's concerns regarding its duty to respond to queries regarding radio frequency energy levels. Accordingly, the Commission might

require that all structures requiring FAA clearance must be registered and all structures upon which high-powered or microwave radio facilities are located. This additional requirement regarding the operation of radio facilities whose radio energy output is under review would not create an undue burden on the public and, in most cases, would be duplicative with the requirement that all structures requiring FAA clearance be registered. Fryer respectfully suggests that most high powered stations, such as mass media stations, and most microwave stations are located on FAA cleared sites anyway.

Notice To Owners:

This issue is perhaps the most difficult to resolve, since providing notice to a person who heretofore was not subject to regulation and whose identity might be unknown to the Commission is extremely difficult to make meaningful and effective. Obviously, if the owner has previously registered the structure, then the Commission would have the necessary information to send a letter to the owner, requiring that necessary painting and lighting be performed. If, however, the structure has not been registered, the Commission may have substantial difficulty in even locating the appropriate party for such notice. In fact, the Commission may encounter the same difficulty in its attempts to impose a forfeiture. Fryer suggests that notice be by letter and by publication in the Federal Register. Only in this manner will the Commission have reasonable assurance that its notice will be effective and acted upon by the owner.

Environmental Impact:

The Commission's Rules and the recommended Form 854 should include an opportunity to address all environmental impact issues at the time of registration. This would be far more efficient for future processing and would place the burden for the environmental impact of construction and operation on the owner. Since the structure owner is in the best position to assure compliance with these regulations, it is logical to take those steps which are necessary to allow the owner to demonstrate such compliance.

Data Accuracy:

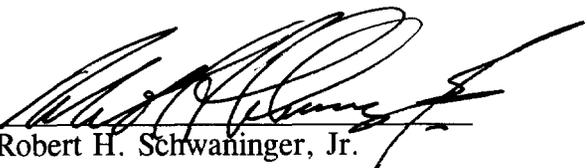
Whatever method is employed by the Commission should be uniform as to all radio services. It is illogical to propose that varying standards be applied across radio services. The issue is moreover the level of accuracy required to administer the construction and operation of antenna structures and the attendant uses of the radio spectrum. Fryer respectfully suggests that the Commission's proposed accuracy levels to the nearest second and accuracy to the nearest meter are sufficient for these purposes and should be generally adopted.

Conclusion

Fryer hereby supports registration of antenna structures which are subject to FAA clearance. This activity is consistent with recent changes in the Communications Act and will be an added benefit to the Commission's efforts to assure the safety of air navigation. Fryer does, however, respectfully recommend that the Commission's registration program be limited to those structures which require FAA clearance for those reasons stated herein.

Respectfully submitted,

DEAN BROTHERS PUBLISHING D/B/A
FRYER'S SITE GUIDE

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